



August 10, 2000

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 13084  
Austin, Texas 78711

OR2000-3043

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138058.

The Texas Department of Criminal Justice (the "department") received a written request for records pertaining to a particular use of force on a prison inmate. You contend that the requested information is excepted from disclosure under section 552.131 of the Government Code.

The department received the records request on May 16, 2000. You requested a decision from this office on June 12, 2000. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See Hancock*, 797 S.W.2d at 381.

On the other hand, a demonstration that information comes under the protection of an exception to disclosure intended to protect the privacy interests of an individual constitutes a compelling reason for non-disclosure. *See Open Records Decision No. 150 (1977)*. We

believe that section 552.131 of the Government Code is such an exception. Section 552.131(a), relating to inmates of the department, provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.029 of the Government Code provides:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure [:]

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Section 552.131 is explicitly made subject to section 552.029. Under section 552.029(8), "basic information" regarding the use of force involving an inmate is subject to required disclosure. Accordingly, with regard to the information you submitted, the department must release basic information regarding the use of force. Basic information includes the time and place of the incident, names of the inmates directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. All remaining information in the submitted documents must be withheld from the public pursuant to section 552.131, with the following exceptions.

We note that some of the records at issue are specifically made confidential by statute. The fact that the release of certain information is governed by statutes outside the Public Information Act also constitutes a compelling reason for withholding the information. Open Records Decision No. 150 (1977). The inmate's medical records are made confidential under the Texas Medical Practice Act (the "MPA"), Occ. Code § 151.001 *et. seq.* Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Consequently, access to the inmate's medical records are governed by chapter 159 of the Occupations Code and the department must release or withhold those records in accordance with those provisions.

Similarly, two of the records at issue consist of EMS records. Section 773.091 of the Health and Safety Code provides in pertinent part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

....

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Because these two records constitute "[r]ecords of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician," they must be withheld pursuant to section 773.091(b). However, to the extent that these records contain the types of information listed in subsection (g), that information must be released.

In summary, the department must withhold all of the requested records pursuant to section 552.131 of the Government Code, except for 1) that information specifically subject to release under section 552.029 of the Government Code, 2) those medical records that may be released only in accordance with chapter 159 of the Occupations Code, and 3) the EMS records that may be released only in accordance with section 773.091 of the Health and Safety Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

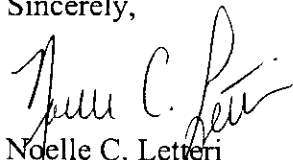
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Lettieri  
Assistant Attorney General  
Open Records Division

NCL/RWP/ljp

Ref: ID# 138058

Encl. Submitted documents

cc: Mr. Oscar Nipper, Esq.  
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(w/o enclosures)